



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE STATE OF DELAWARE, *ex* )  
*rel.* Kathleen Jennings, Attorney )  
General of the State of Delaware, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MCKINSEY & COMPANY, INC., )  
UNITED STATES, )  
 )  
Defendant. )

C.A. No. \_\_\_\_\_

**VERIFIED COMPLAINT**

Plaintiff the State of Delaware, *ex rel.* Kathleen Jennings, Attorney General of the State of Delaware, brings this Verified Complaint against Defendant McKinsey & Company, Inc., United States for violations of Delaware's Consumer Fraud Act, 6 *Del. C.* § 2511, *et seq.*, and alleges the following:

**Parties**

1. Plaintiff is the State of Delaware, appearing by and through Kathleen Jennings, the Attorney General of the State of Delaware.

2. The Attorney General is the chief law officer of the State and is constitutionally and statutorily authorized to bring this action, pursuant to 6 *Del. C.* § 2522 and 29 *Del. C.* § 2522, in her *parens patriae* capacity, as Delaware has a quasi-sovereign interest in the health and well-being—

physically and economically—of its citizens who have suffered because of McKinsey’s conduct.

3. Defendant McKinsey & Company, Inc., United States (“McKinsey”) is a privately owned entity headquartered in New York, N.Y.

### **Jurisdiction and Venue**

4. This Court has jurisdiction over the subject matter of this action, personal jurisdiction over McKinsey, and authority to grant the relief requested pursuant to 6 *Del. C.* §§ 2522, 2523, and 2533; 29 *Del. C.* § 2522; and the Court’s equitable clean-up doctrine, *Kraft v. Wisdom Trees Inves., Inc.*, 145 A.3d 969, 974 (Del. Ch. 2016).

5. At all times relevant to this proceeding, McKinsey did business in the State and purposefully availed itself of this forum.

### **Factual Allegations**

6. Beginning in the mid-1990s, opioid manufacturers pursued aggressive sales strategies to increase sales of their prescription opioids, a plan that resulted in a dramatic rise in opioid prescriptions in the State. The rise in opioid prescriptions caused an equally devastating rise in opioid abuse, dependence, addiction, and overdose deaths.

7. Prescription opioids continue to kill hundreds of people across the State every year. Thousands more suffer from negative health

consequences short of death and countless others have had their lives ruined by a friend or family member's addiction or death. Every community in the State suffers from the opioid crisis of addiction and death.

8. McKinsey worked with entities involved in manufacturing and selling opioids and thereby contributed to the opioid crisis.

9. McKinsey is one of the world's largest consulting companies. Its partners work worldwide for corporations and governments across diverse industries. Its influence is vast because of its best-in-class reputation. McKinsey sells the notion that it can take whatever a company or government is doing and make them do it better.

10. The State brings this action against McKinsey for the consulting services it provided to opioid companies in connection with designing the companies' marketing plans and programs that helped cause and contributed to the opioid crisis. McKinsey sold its ideas to OxyContin maker Purdue Pharma, L.P. ("Purdue") for more than fifteen years, from 2004 to 2019, including before and after Purdue's 2007 guilty plea for felony misbranding.

11. McKinsey advised Purdue and other manufacturers to target prescribers who write the most prescriptions, for the most patients, and thereby make the most money for McKinsey's clients.

12. Early in their relationship, McKinsey advised Purdue that it could increase OxyContin sales through physician targeting and specific messaging to prescribers. These McKinsey strategies formed the pillars of Purdue's sales tactics for the next fifteen years.

13. In 2008, McKinsey worked with Purdue to develop its FDA mandated risk evaluation and mitigation strategy ("REMS"). McKinsey advised Purdue to "band together" with other opioid manufacturers toward a class REMS to "formulate arguments to defend against strict treatment by the FDA." Ultimately, the FDA adopted a class-wide REMS that resulted in high-dose OxyContin remaining subject to the same oversight as lower-dose opioids.

14. In 2009, Purdue hired McKinsey to increase "brand loyalty" to OxyContin. McKinsey recommended the best ways to ensure loyalty to the brand by targeting specific patients, including patients new to opioids, and developing targeted messaging for specific prescribers.

15. Purdue thereafter adopted McKinsey's proposed prescriber messaging and patient targeting advice and incorporated them into Purdue's marketing and sales strategies.

16. In 2013, McKinsey conducted another analysis of Oxycontin growth opportunities for Purdue, and laid out new plans to increase sales of

OxyContin. Among the key components of McKinsey's plan adopted by Purdue were to:

- a. focus sales calls on high-volume opioid prescribers, including those who wrote as many as 25 times as many OxyContin scripts as their lower volume counterparts;
- b. remove sales representative discretion in target prescribers;
- c. focus Purdue's marketing messaging to titrate to higher, more lucrative dosages;
- d. significantly increase the number of sales visits to high-volume prescribers; and
- e. create an "alternative model for how patients receive OxyContin," including direct distribution to patients and pharmacies, to help address the "product access" problem.

17. Purdue approved McKinsey's plan, and together with McKinsey, moved to implement the plan to "Turbocharg[e] Purdue's Sales Engine," under the name Evolve 2 Excellence ("E2E"). E2E significantly increased Purdue's opioid sales, in particular, for OxyContin.

18. McKinsey partners participated as part of an Executive Oversight Team and Project Management Office, reporting to Purdue's Executive, the Purdue board, and with the Sacklers, individually. McKinsey worked side by side with Purdue and helped Purdue plan and implement E2E, assisting with sales representative training, productivity, messaging, and call plans, IT systems, promotional strategies, and market forecasting.

19. In developing the targeted messaging to increase sales of OxyContin, McKinsey conducted significant market research, including through ridealongs with Purdue sales representatives to learn how they promoted OxyContin. McKinsey carefully monitored Purdue sales representatives and provided guidance on prescriber messaging and adhering to target prescriber lists. McKinsey advised that sales representatives do more to promote the so-called abuse deterrent properties of a reformulated version of OxyContin to address prescriber concerns about abuse risk.

20. When a large pharmacy chain took steps to scrutinize suspicious opioid orders, McKinsey stressed to Purdue's owners the "need to take action" on this "urgent" issue affecting OxyContin. McKinsey told Purdue's owners to engage in senior level discussions with the pharmacy chain, increase efforts with patient advocacy groups to clamor against dispensing limits, and accelerate considerations of an alternative distribution

channel, such as delivering OxyContin directly to patients through mail-order pharmacies.

21. After E2E, McKinsey continued to work with Purdue, including on a project that identified the growing addiction crisis as a profit-making opportunity. McKinsey told Purdue that it should strive to become a provider across the spectrum of drug abuse and addiction because of the opportunities it presented. McKinsey advised Purdue to get into the manufacturing and marketing of opioid rescue and treatment medications in order to profit from the realities of dependence, addiction, and abuse. Indeed, in 2018, Purdue owner Dr. Richard Sackler received a patent for a drug to treat opioid addiction.

22. McKinsey also partnered with Purdue to test a program called FieldGuide, a proprietary software that McKinsey sought to license to other manufacturers. This software would enable other opioid manufacturers to target and aggressively pursue high-volume prescribers.

23. McKinsey continued to design and develop ways that Purdue could increase sales of OxyContin well after the opioid epidemic peaked. One proposal McKinsey recommended was for Purdue pay “additional rebates on any new OxyContin related overdose or opioid use disorder diagnosis.” McKinsey advised Purdue on its strategies to obtain and

maintain broad formulary coverage for OxyContin with insurers and pharmacy benefit managers, even as payors began reducing coverage for OxyContin as the opioid crisis mounted.

24. Subsequently, in the wake of hundreds of thousands of opioid deaths and thousands of lawsuits, McKinsey proposed a plan for Purdue's exit from the opioid business whereby Purdue would continue selling opioids as a way to fund new Purdue ventures. According to McKinsey, this change was necessary because of the negative events that materially compromised the Purdue brand.

25. McKinsey's work for opioid manufacturers extended beyond Purdue. McKinsey collected millions of dollars designing and implementing marketing programs for the country's largest opioid manufacturers, including Johnson & Johnson and Endo, increasing the sale and use of opioids in the State. McKinsey designed and implemented for other opioid manufacturers marketing plans similar to those it created for Purdue.

26. At the same time McKinsey was working for opioid companies, McKinsey also consulted with governments and non-profits working to abate the raging opioid crisis—a crisis that McKinsey's own research showed was caused in large part by prescription opioids.



27. There are indications that individuals at McKinsey considered destroying or deleting documents related to their work for Purdue.

28. In 2019, McKinsey announced that it no longer worked for Purdue or other opioid manufacturers. But the harm created by McKinsey's marketing plans for opioid manufacturers has not stopped.

29. Opioids have killed thousands in the State, and continue to ravage the lives of many more, creating one of the largest public health epidemics in the country's history. Economically, the toll is equally grim. The opioid crisis has forced the State to pay hundreds of millions of dollars for increased costs in health care, child welfare, criminal justice, and many other programs needed to abate the epidemic.

30. Months after McKinsey stopped its opioid work, Purdue filed for bankruptcy. More than a hundred thousand individuals filed claims for personal injuries. States and local governments filed claims for trillions of dollars incurred as a result of the opioid crisis. Another McKinsey client, opioid manufacturer Mallinckrodt plc, similarly filed for bankruptcy protection in October 2020.

31. In 2019, an Oklahoma state court found that McKinsey client Johnson & Johnson helped cause the opioid epidemic in Oklahoma, ordering it to pay \$465 million to help abate the crisis.

32. In 2020, Purdue pleaded guilty to three felonies as a result of conduct spanning a decade – from 2007 to 2017 – during which Purdue worked side-by-side with McKinsey to design and implement marketing campaigns to increase dangerous opioid sales.

33. In 2020, Purdue and the members of the Sackler family who owned Purdue also settled civil claims by the Department of Justice for hundreds of millions of dollars. The materials filed in connection with that plea and settlement agreements contain a statement of facts regarding McKinsey's conduct and involvement in the conduct leading to the civil claims against Purdue and the Sackler family.

### **Claims for Relief**

#### **Count I — Violation of the Consumer Fraud Act**

34. The State realleges and incorporates by reference the allegations contained in paragraphs 1 through 33 of this Verified Complaint as if fully set forth herein.

35. McKinsey is or was at times relevant to this action engaged in business, trade, or commerce in the State within the meaning of the Consumer Fraud Act, 6 *Del. C.* § 2511, *et seq.*

36. In the course of its business, McKinsey worked with certain of its opioid manufacturing clients to aggressively promote and sell more opioids to more patients for longer periods of time.

37. Such actions constitute trade practices that are prohibited by Section 2513 of the Consumer Fraud Act.

38. McKinsey's conduct has injured consumers in the State. McKinsey's actions directly and proximately caused the State's injuries.

### **Request for Relief**

WHEREFORE, the State of Delaware respectfully requests that the Court grant the following relief:

A. Adjudge and decree that McKinsey has engaged in the acts or practices complained of herein, and that such constitute acts or practices in violation of the Consumer Fraud Act;

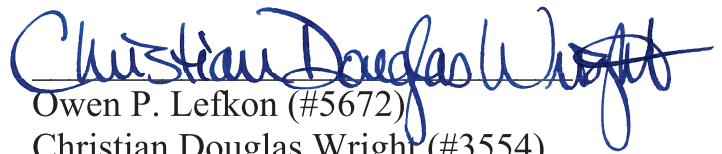
B. Issue a permanent injunction prohibiting McKinsey, its agents, servants, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in trade practices prohibited by the Consumer Fraud Act;

C. Order McKinsey to make such financial payments as are authorized by law.

D. Order McKinsey to pay costs and reasonable attorneys' fees incurred by the State in connection with the investigation and prosecution of this Complaint, pursuant to 29 *Del. C.* § 2522(d); and

E. Order such other relief as the Court deems necessary, proper, and just.

Respectfully submitted,



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Dated: February 4, 2021

*Attorneys for the State of Delaware,  
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